

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

KENNETH RICHARD HARRISON,

Plaintiff,

v

Case No. 19-12729

Honorable Thomas L. Ludington

MICHIGAN DEPARTMENT OF CORRECTIONS,

Defendant.

**ORDER ADOPTING REPORT AND RECOMMENDATION AND DISMISSING
PLAINTIFF'S COMPLAINT**

On September 16, 2019, Plaintiff Kenneth Richard Harrison filed a civil complaint against Defendant Michigan Department of Corrections. ECF No. 1. Plaintiff alleges that a “nurse Ziggler” injured him during a medical procedure in 2017. *Id.* at PageID.1.

On September 19, 2019, the complaint was referred to Magistrate Judge Morris. ECF No. 4. On October 2, 2019, Judge Morris issued a report recommending that Plaintiff's complaint be dismissed. ECF No. 7. Her report provides that the Eleventh Amendment to the United States Constitution prevents a state or its instrumentalities from being sued “unless the state has waived its sovereign immunity or consented to be sued.” *McCoy v. Michigan*, 369 F. App'x 646, 653 (6th Cir. 2010). The Michigan Department of Corrections is an instrumentality of the state Michigan and thus, is immune from suit. Judge Morris recommended that Plaintiff's complaint be dismissed because the Michigan Department of Corrections is the only named defendant. ECF No. 7 at PageID.21.

Although Judge Morris's report explicitly stated that the parties to this action may object to and seek review of the recommendation within fourteen days of service of the report, neither Plaintiff nor Defendant filed any objections. The election not to file objections to the Magistrate

Judge's report releases the Court from its duty to independently review the record. *Thomas v. Arn*, 474 U.S. 140, 149 (1985). The failure to file objections to the report and recommendation waives any further right to appeal.

Accordingly, it is **ORDERED** that Judge Morris's Report and Recommendation, ECF No. 7, is **ADOPTED**.

It is further **ORDERED** that Plaintiff's complaint, ECF No. 1, is **DISMISSED**.

Dated: October 30, 2019

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served **Kenneth Richard Harrison**, 7116 S. Straits Hwy, Indian River, MI 49749 by first class U.S. mail on October 30, 2019.

s/Kelly Winslow
KELLY WINSLOW, Case Manager